

FILED  
JANUARY 15 2008  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

2008 MAY 15 AM 10:13

J.W. HARRIS CO., INC.  
4501 Quality Place  
Mason, OH 45040

*Plaintiff,*

*v.*

FLAME TECHNOLOGIES INCORPORATED  
703 Cypress Creek Road  
Cedar Park, TX 78613

*Defendant.*

Civil Action No. 1:08 cv 272

CONSENT JUDGMENT AND  
DISMISSAL

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WEST DIVISION CINCINNATI

**CONSENT JUDGMENT AND DISMISSAL**

**WHEREAS**, this Consent Judgment is entered in conjunction with the settlement of the above-captioned action;

**WHEREAS**, J.W. Harris Co., Inc. consents to the entry of this consent judgment and dismissal; and

**WHEREAS**, Flame Technologies Inc. consents to the entry of this consent judgment and dismissal.

**IT IS HEREBY ORDERED, DECREED, AND ADJUDGED** as follows:

1. Flame Technologies Inc. recognizes that the Harris Trademarks (United States Trademark Registration No. 1,013,432, United States Trademark Registration No. 1,450,474 and United States Trademark Registration No. 1,730,056) are valid, enforceable and valuable intellectual property, and that United States Trademark Registration No. 2,276,855 (the "Steelworker" trademark) owned by Lincoln Global Inc. is valid, enforceable and valuable intellectual property.

2. Flame Technologies Inc. shall:

a. immediately cease and desist from making or causing to have made, using, selling, promoting, advertising, importing or otherwise using in commerce any products, packaging or product literature using, displaying or otherwise employing any of the trademarks identified above or marks, trade names or service marks that are confusingly similar to those trademarks identified above;

b. within sixty (60) days of the filing of this Consent Judgment cease and desist from using the phrases "Harris," "Harris Style" and "Steel Pro" either alone or

in combination with other words or phrases on any products, packaging, advertising and/or product literature, and within sixty (60) days of the filing of this Consent Judgment cease and desist using the trade names or marks "Steel" or "Pro," either alone or in combination, on any products or product kits which are identified as compatible with any Harris or The Lincoln Electric Co. products or product kits;

c. within sixty (60) days of the filing of this Consent Judgment, on any products or parts sold or otherwise distributed by Flame Technologies Inc. which are identified as being compatible with products or parts sold or otherwise distributed by J.W. Harris Co., Inc. or The Lincoln Electric Company, cease and desist the use of any product part numbers, model numbers and/or identification numbers or codes of any kind which correspond, in any way, to part numbers, model numbers and/or identification numbers of any products or parts sold or otherwise distributed by J.W. Harris Co., Inc. or The Lincoln Electric Company; and

d. immediately cease and desist from engaging in any acts that infringe United States Trademark Registration No. 1,013,432, United States Trademark Registration No. 1,450,474, United States Trademark Registration No. 1,730,056 and United States Trademark Registration No. 2,276,855.

3. Notwithstanding the foregoing, Flame Technologies Inc. is permitted to identify any products or parts as being "Compatible with Harris® Products," so long as all products, parts, advertising materials, products labels, packaging and websites which contain the phrase "Compatible with Harris® Products" also contain the following disclaimer: "Harris® is the registered trademark of The Lincoln Electric Co. Flame Tech is not affiliated or endorsed by Harris or The Lincoln Electric Co."

4. Notwithstanding the provisions of Section 2c, above, Flame Technologies Inc. is permitted to continue to use industry standard part numbers to identify industry standard consumables, such as cutting tips and welding tips, as well as Flame Technologies Inc. "6000" series part number for torches.

5. Harris dismisses with prejudice all claims of the above-captioned action upon entry of this Consent Judgment.

6. Each party shall bear its respective court costs, attorney's fees, and other expenses of litigation.

IT IS SO ORDERED, DECREED, AND ADJUDGED this 15<sup>th</sup> day of May, 2008.

  
Sandra S. Beckwith  
Chief Judge, United States District Court

Consented to:

/s/ Michael A. Marrero

Michael A. Marrero  
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Suite 2800  
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*Attorney for J.W. Harris Co., Inc.*

/s/ Shawn Toops

Shawn Toops  
Flame Technologies Incorporated  
703 Cypress Creek Rd.  
Cedar Park, TX 78613  
  
*President of Flame Technologies Inc.*

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

The undersigned, a member of the bar of this Court, hereby certifies that on this 13<sup>th</sup> day of May 2008, a true and correct copy of the foregoing **CONSENT JUDGMENT AND DISMISSAL** was served via e-mail and via Federal Express overnight mail on the following counsel:

Shawn Toops  
Flame Technologies Incorporated  
703 Cypress Creek Rd.  
Cedar Park, TX 78613

/s/Michael A. Marrero  
Michael A. Marrero